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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 JOSEPH VICTOR JOHNSON,

12 Plaintiff,

13 vs.

14 CAROLYN W. COLVIN,
Commissioner of Social Security,

15 Defendant.

CASE NO. 12cv1877-WQH-DHB
ORDER

16 HAYES, Judge:

17 The matters before the Court are the Motion for Attorney's Fees Pursuant to the
18 Equal Justice Act, 28 U.S.C. § 2412(d) (ECF No. 21), and the Amended and Corrected
19 Motion for Attorney's Fees (ECF No. 30), both filed by Plaintiff Joseph Victor
20 Johnson.

21 **I. Background**

22 On July 3, 2007, Plaintiff filed an initial application for Supplemental Security
23 Income, alleging a disability beginning on April 1, 2003. (Administrative Record, ECF
24 No. 9 at 94). On November 28, 2007, Plaintiff's initial application was denied. *Id.* at
25 78-81. On March 3, 2008, Plaintiff's application was denied on reconsideration. *Id.*
26 at 83-87. On May 2, 2008, Plaintiff filed a timely request for a hearing before an
27 Administrative Law Judge ("ALJ"). *Id.* at 89-90.

28 On April 22, 2009, the ALJ denied Plaintiff benefits after finding that Plaintiff

1 was not disabled within the meaning of the Social Security Act. *Id.* at 6-26. On May
2 22, 2009, the Appeals Council adopted the ALJ's findings. *Id.* at 1-3.

3 Plaintiff sought judicial review of the Commissioner's decision in United States
4 District Court for the Eastern District of California. On September 16, 2010, the district
5 court granted Plaintiff's motion for summary judgment and denied the Commissioner's
6 cross-motion for summary judgment. *Id.* at 415-21. The district court remanded the
7 case to the Appeals Council for further administrative proceedings. *Id.* at 415-16.

8 On November 6, 2010, the Appeals Council remanded Plaintiff's claim to an ALJ
9 for further administrative proceedings. *Id.* at 423-24. On June 4, 2012, the ALJ issued
10 a written decision denying Plaintiff's application for benefits. *Id.* at 352-72. The ALJ
11 concluded that Plaintiff was not disabled within the meaning of the Social Security Act.
12 *Id.* at 365.

13 On July 31, 2012, Plaintiff filed a Complaint in this Court pursuant to section
14 405(g) of the Social Security Act, seeking judicial review of the final decision of the
15 Commissioner to deny Plaintiff's claim for disability benefits. (ECF No. 1). On
16 October 17, 2012, Defendant filed an Answer (ECF No. 8) and lodged the
17 Administrative Record. (ECF No. 9). On November 28, 2012, Plaintiff filed a Motion
18 for Summary Judgment. (ECF No. 12). On December 31, 2012, Defendant filed an
19 Amended Cross-Motion for Summary Judgment and Opposition. (ECF No. 16). On
20 January 11, 2013, Plaintiff filed a Reply. (ECF No. 17).

21 On July 16, 2013, the Magistrate Judge issued a Report and Recommendation,
22 recommending that the Court deny Plaintiff's Motion for Summary Judgment and grant
23 Defendant's Cross-Motion for Summary Judgment. (ECF No. 18). On July 30, 2013,
24 Plaintiff filed Objections to the Report and Recommendation. (ECF No. 19).

25 On September 30, 2013, this Court adopted in part and did not adopt in part the
26 Magistrate Judge's Report and Recommendation. (ECF No. 20). The Court adopted
27 the Report and Recommendation with respect to the ALJ's decision to reject the
28 opinions of Plaintiff's treating psychiatrists, but otherwise did not adopt the Report and

1 Recommendation. *Id.* at 18. The Court granted in part Plaintiff's Motion for Summary
 2 Judgment and denied Defendant's Cross-Motion for Summary Judgment. *Id.* at 18-19.
 3 The Court remanded Plaintiff's case to the Social Security Administration for further
 4 proceedings. *Id.* at 19.

5 On December 20, 2013, Plaintiff filed the Motion for Attorney's Fees Pursuant
 6 to the Equal Access to Justice Act, 28 U.S.C. § 2412(d). (ECF No. 21). On February
 7 21, 2014, Defendant filed an Opposition. (ECF No. 26). On March 7, 2014, Plaintiff
 8 filed a Reply. (ECF No. 28). On May 5, 2014, Plaintiff filed the Amended and
 9 Corrected Motion for Attorney's Fees. (ECF No. 30).

10 **II. Contentions of the Parties**

11 Plaintiff contends that he is entitled to attorney's fees under the Equal Access to
 12 Justice Act, 28 U.S.C. § 2412(d) ("EAJA") on the grounds that Plaintiff was the
 13 prevailing party, Defendant's position was not substantially justified, and the attorney's
 14 fees claimed are reasonable. (ECF No. 21 at 2-4, 9). Plaintiff's counsel, John V.
 15 Johnson, includes in the motion an itemized record of time expended on this case. *Id.*
 16 at 9. Plaintiff seeks EAJA attorney's fees for 55 hours of work completed in 2012 and
 17 2013.¹ (ECF Nos. 21 at 9, 30 at 1).

18 Defendant contends that Plaintiff is not entitled to fees under the EAJA on the
 19 grounds that "the government's position was substantially justified" and that "Plaintiff's
 20 fee request is excessive and unreasonable." (ECF No. 26 at 6, 8). Defendant contends
 21 her "string of successes demonstrates substantial justification." (ECF No. 26 at 4).

22 **III. Discussion**

23 **A. Entitlement to Fees**

24 The EAJA provides:

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 26 ¹ Plaintiff's Amended and Corrected Motion for Attorney's Fees corrects the
 27 statutory EAJA rate and the total amount of fees Plaintiff is requesting. Both Plaintiff's
 28 Motion and Amended Motion incorrectly state the EAJA statutory hourly rate for 2012
 and 2013. (ECF Nos. 21, 30). Defendant's Motion correctly states the rate for 2012.
 (ECF No. 26). As discussed *infra*, the Court finds that the correct hourly rate for 2012
 is \$185.72, and the correct hourly rate for 2013 is \$188.48. The total amount of fees
 for the 55 hours Plaintiff requests is \$10,264.28.

1 Except as otherwise specifically provided by statute, a court shall award
 2 to a prevailing party other than the United States fees and other expenses
 3 ... incurred by that party in any civil action (other than cases sounding in
 4 tort), including proceedings for review of agency action, brought by or
 against the United States in any court having jurisdiction of that action,
 unless the Court finds that the position of the United States was
 substantially justified or special circumstances make an award unjust.

5 28 U.S.C. § 2412(d)(1)(A); *see also Love v. Reilly*, 924 F.2d 1492, 1496 (9th Cir. 1991)
 6 (“Under the EAJA, the prevailing party is automatically entitled to attorney’s fees for
 7 any fee litigation once the district court has made a determination that the government’s
 8 position lacks substantial justification.”).

9 The government’s position is substantially justified “if it has a reasonable basis
 10 in law and fact” to rely upon the ALJ’s assessment; reasonable basis means “a degree
 11 that could satisfy a reasonable person.” *Pierce v. Underwood*, 487 U.S. 552, 565-66 n.2
 12 (1988). Reasonableness is determined by examining both the agency’s underlying
 13 conduct and the agency’s subsequent litigation position, which led this Court to order
 14 a remand. *See Gutierrez v. Barnhart*, 254 F.3d 1255, 1259 (9th Cir. 2001); *Corbin v.*
 15 *Apfel*, 149 F.3d 1051, 1052 (9th Cir. 1998) (“The government’s position must be
 16 substantially justified at each stage of the proceedings.”) (quotation omitted). “Where
 17 ... the ALJ’s decision was reversed on the basis of procedural errors, the question is not
 18 whether the government’s position as to the merits of [plaintiff]’s disability claim was
 19 substantially justified. Rather, the relevant question is whether the government’s
 20 decision to defend on appeal the procedural errors committed by the ALJ was
 21 substantially justified.” *Shafer v. Astrue*, 518 F.3d 1067, 1071 (9th Cir. 2008). The
 22 burden of establishing substantial justification is on the government. *See Gutierrez v.*
 23 *Barnhart*, 274 F.3d 1255, 1258 (9th Cir. 2001).

24 In this case, Plaintiff is the prevailing party. (ECF No. 20 at 18-19). The Court
 25 found that the ALJ erred in failing to consider the relevant opinions of Dr. Tyl which
 26 were favorable to Plaintiff, despite the ALJ “credit[ing] and adopt[ing]” Dr. Tyl’s
 27 opinion without reservation. *Id.* at 17 (quoting Admin. R. at 364, ECF No. 9-8). The
 28 Court finds that, under the facts of this case, Defendant has failed to establish that its

position was substantially justified. *See Flores v. Shalala*, 49 F.3d 562, 569-71 (9th Cir. 1995) (holding that the government's decision to oppose claimant's remand request on appeal was not substantially justified when the ALJ failed to consider a vocational report bearing on the issue of disability); *cf. Shafer*, 518 F.3d at 1072 ("The ALJ rejected a treating physician's opinion in favor of a non-treating physician's opinion without providing clear and convincing reasons, and committed several errors in assessing Shafer's residual functional capacity. It follows a fortiori the government's defense of the ALJ's procedural errors was not substantially justified, and Shafer is entitled to attorneys' fees under the EAJA."). The Court awards Plaintiff attorney's fees pursuant to the EAJA.

B. Reasonableness of Fees

Defendant contends that the "55 hours [Plaintiff's counsel] spent on this case was excessive or otherwise unnecessary." (ECF No. 26 at 9). Defendant contends that "[c]ounsel's block billing makes it difficult to separate the time spent writing from the time spent reviewing the record ... [which] supports a 40% reduction in the hours billed by Plaintiff's counsel." *Id.* Defendant contends that "8 hours for preparing and drafting Plaintiff's EAJA Motion ... is excessive and should be reduced." *Id.* at 10.

Plaintiff contends that his attorneys' "fee[s] ... are reasonable because he did not represent [P]laintiff at the prior administrative hearing and had to take extra time to review and analyze the 1034 page Certified Transcript of administrative proceedings." (ECF No. 21 at 10). Plaintiff contends that "the procedural history and complexity of the issues should also be considered because he had to overcome two unfavorable hearing decisions along with the U.S. Magistrate's affirmation of the last denial, and he had to distinguish his case from the holding in [*Hoopai v. Astrue*], 499 F.3d 1071 (9th Cir. 2007)." *Id.*

Attorney fees awarded pursuant to the EAJA must be reasonable. *See* 28 U.S.C. § 2412(d)(2)(A). In determining whether a fee is reasonable, the court considers the hours expended, the reasonable hourly rate, and the results obtained. *See Comm'r,*

1 *I.N.S. v. Jean*, 496 U.S. 154, 161 (1990) (“the district court [has] discretion to determine
 2 the amount of a fee award, given its superior understanding of the litigation and the
 3 desirability of avoiding frequent appellate review of what essentially are factual
 4 matters.”) (quotation omitted); *Hensley v. Eckerhart*, 461 U.S. 424 (1983); *Atkin v.*
 5 *Apfel*, 154 F.3d 986 (9th Cir. 1998). “[I]t is [] an abuse of discretion to apply a de facto
 6 policy limiting social security claimants to twenty to forty hours of attorney time in
 7 ‘routine’ cases.... [The fee] determination will always depend on case-specific factors
 8 including, among others, the complexity of the legal issues, the procedural history, the
 9 size of the record, and when counsel was retained.” *Costa v. Comm’r of Soc. Sec.*
 10 *Admin.*, 690 F.3d 1132, 1136 (9th Cir. 2012).

11 Counsel did not represent Plaintiff at the administrative level and had to become
 12 familiar with the case, which included review of an extensive 1,034-page administrative
 13 transcript. (ECF No. 21 at 10). While not novel, Plaintiff’s case was somewhat
 14 complex and involved significant issues. Plaintiff’s Motion for Summary Judgment
 15 consisted of 45 pages. (ECF No. 13). Plaintiff filed a 10-page Reply to Defendant’s
 16 Cross-Motion for Summary Judgment (ECF No. 17), a 10-page Objection to the 39-
 17 page Report and Recommendation (ECF No. 19), a 10-page EAJA Motion (ECF No.
 18 21) and a 10-page Reply to the Opposition of that motion (ECF No. 28). The Court has
 19 reviewed the hours claimed by counsel and finds no reason to believe they are inflated.
 20 After reviewing the record and the filings of the parties, the Court finds that counsel’s
 21 time spent preparing the Complaint, the Motion for Summary Judgment, the Reply
 22 Brief, the EAJA Fee Petition, and other documents is reasonable given the facts of this
 23 case. *See e.g., Gomez v. Astrue*, Case No. 06cv2051 BTM (NLS), 2008 WL 3200668
 24 at *3-4 (S.D. Cal. Aug. 5, 2008) (awarding plaintiff’s counsel fees for 11 hours of work
 25 related to the preparation of the EAJA motion and reply); *Mendoza v. Bowen*, 701 F.
 26 Supp. 1471, 1472 (N.D. Cal. 1988) (finding that plaintiff’s counsel reasonably
 27 expended 50 hours on a case that lacked any novel issues).

28 In the Amended Motion for Attorney Fees, Plaintiff contends that the hourly rate

1 for EAJA fees is \$184.00 for 2012 and \$187 for 2013. (ECF No. 30 at 1). Defendant
2 correctly contends the rate for 2012 is \$185.72. (ECF No. 26 at 10). *See* 28 U.S.C. §
3 2412(d)(2)(A) (setting the hourly rate cap at “\$125 per hour unless the court determines
4 that an increase in the cost of living ... justifies a higher fee.”); *Thangaraja v. Gonzalez*,
5 428 F.3d 870, 876-77 (9th Cir. 2005) (“Appropriate cost-of-living increases are
6 calculated by multiplying the \$125 statutory rate by the annual average consumer price
7 index figure for all urban consumers (‘CIP-U’) for the years in which counsel’s work
8 was performed, and then dividing by the CPI-U figure for March 1996, the effective
9 date of the EAJA’s \$125 statutory rate.”). The Court finds that an hourly rate of
10 \$185.72 for 2012 and \$188.48 for 2013 is appropriate.

11 **IV. Conclusion**

12 IT IS HEREBY ORDERED that the Motion for Attorney’s Fees Pursuant to the
13 Equal Access to Justice Act (ECF No. 21) is GRANTED as follows. Plaintiff is entitled
14 to a total award of \$10,264.28, which is comprised of 37 hours in 2012 at the rate of
15 \$185.72 and 18 hours in 2013 at the rate of \$188.48. The Amended and Corrected
16 Motion for Attorney Fees (ECF No. 30) is DENIED as moot.

17 DATED: July 2, 2014

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19 **WILLIAM Q. HAYES**
20 United States District Judge
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